IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, *Plaintiff,* v. CARL FREDERIC SEALEY, *Defendant.*	CRIMINAL ACTION NO. 17-347

PAPPERT, J. **January 4, 2019**

MEMORANDUM

Carl Frederic Sealey was charged by indictment with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 and thirteen counts of wire fraud and aiding and abetting in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2, respectively. (ECF No. 1.) The charges arose from Sealey's use of two purported private equity investment firms, Global Standard Industries and its successor SEK Industries, to fleece numerous people out of more than $1.6 million.

On June 11, 2018, pursuant to a written Guilty Plea Agreement, Sealey pled guilty to conspiracy to commit wire fraud (Count One) and wire fraud (Count Fourteen), with the Government agreeing to dismiss the remaining counts at his sentencing. (ECF No. 57.) On September 28, 2018, the Court sentenced Sealey to 78 months imprisonment, within the advisory sentencing guideline range of 70 to 87 months, three

years of supervised release and a $200 special assessment. The Court also ordered him to pay $1,470,825 in restitution.[1] (ECF No. 80.)

On October 22, 2018, Sealey filed a Notice of Appeal. (ECF No. 91.) Three days later, he filed a Motion for Bail Pending Appeal, contending that one of his numerous attorneys, who he does not identify, misled him "as to the charges to which he was advised to plead guilty to" and that his plea was thus neither knowing nor voluntary. (Mot. Bail at 2, ECF No. 92.) The Court denies the Motion.

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"A person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal . . . [must] be detained," unless the Court determines:

> (A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c) of this title; and
> (B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in—
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> (i) reversal,
> (ii) an order for a new trial,
> (iii) a sentence that does not include a term of imprisonment, or
> (iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

18 U.S.C. § 3143(b). The Third Circuit established a four-part test that must be satisfied in order for the Court to grant bail pending appeal:

> (1) that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released;
> (2) that the appeal is not for the purpose of delay;
> (3) that the appeal raises a substantial question of law or fact and

[1] At the sentencing hearing, the Court initially ordered Sealey to pay restitution in the amount of $1,508,325. The Court amended this amount to $1,470,825 on October 5, 2018. (ECF No. 76.)

(4) that if that substantial question is determined favorably to the defendant on appeal, that decision is likely to result in reversal or an order for a new trial of all counts on which imprisonment has been imposed.

United States v. Miller, 753 F.2d 19, 24 (3d Cir. 1985). The defendant has the burden of proving each element. *Id.* A substantial question is one that is "significant in addition to being novel, not governed by controlling precedent or fairly doubtful." *United States v. Smith*, 793 F.2d 85, 88 (3d Cir. 1986). The absence of controlling precedent, however, does not necessarily make a question substantial. *See id.* Rather, a question is substantial if the defendant can demonstrate that it is "fairly debatable" or "debatable among jurists of reason." *Id.* at 89 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

Sealey has not proven any of these elements. The Court cannot determine by clear and convincing evidence that he is not a flight risk or does not pose a danger to the safety of others or the community if released. To the contrary, the Court remanded Sealey into custody immediately after sentencing him based in part on concerns that he might flee if allowed to self-report. (Sentencing Hr'g Tr. 71:10–22, Sept. 28, 2018.) Nor has Sealey shown that he is not likely to pose a danger to others or the community. Based on the factual basis for his guilty plea, victim impact statements, the evidence presented at his sentencing hearing and the findings of fact in the Presentence Investigation Report, the Court concluded at sentencing that Sealey is "an incorrigible criminal, con man, grifter who will not hesitate to separate decent hardworking people from their money." (*Id.* at 62:11–13.)[2]

[2] The Government argues, as it did at sentencing, that Sealey engaged in criminal activity while on bail, including defrauding new victims and spending the proceeds for his own personal benefit. (Resp. Opp'n at 3, ECF No. 97.) The Court makes no such finding for purposes of its decision on Sealey's Motion. The Court already found that Sealey did not fully cooperate with the

Sealey conclusorily argues that his appeal is "not for the purpose of delay, but instead raises 'substantial questions' or [sic] law or fact." (Mot. Bail at 4–5.) While delay is not the Court's primary concern, Sealey hasn't shown why his filing is anything more than a dilatory tactic, given the apparent frivolity of the appeal. (*Id.* at 6.) Specifically, Sealey's appeal raises no substantial question of law or fact, much less one that he has proven will be determined in his favor and is likely to result in a reversal of his convictions. Sealey's primary argument is that one of his lawyers had an undefined conflict of interest and (either related to or separate from the purported conflict) somehow "misled" Sealey as to the "sentencing consequences." (Mot. Bail at 2, 5–6.) As a result, Sealey now claims that his guilty plea was neither knowing nor voluntary. His contention is belied by the record.

Sealey was represented by two lawyers—both of whom he retained—at his change of plea hearing, Joseph Poluka of Blank, Rome LLP and Robert Gamburg of Gamburg and Benedetto.[3] As an initial matter, Sealey does not name the attorney who had the purported conflict. Even if he had, the colloquy from the change of plea hearing makes clear that his plea was knowing and voluntary. Sealey stated that he discussed his case with his attorneys (at least some of whom were apparently conflict-free), was satisfied with their representation and understood the charges against him. (Change of Plea Hr'g Tr. 9:1–21.) The prosecutor recited the material terms of Sealey's Guilty Plea

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Probation Office's investigation into his finances right through sentencing, leading Probation to recommend that Sealey's offense level not be reduced for acceptance of responsibility—a recommendation the Court adopted. (Sentencing Hr'g Tr. 13–15, 26–27, 37–38.)

[3] The docket shows that three other retained attorneys also represented Sealey at some point in this case: Brian Zieger of Levin & Zeiger LLP, Todd Henry of The Henry Firm and most recently Evan Hughes from The Hughes Firm, LLC. Mr. Hughes joined Mr. Gamburg at Sealey's sentencing, filed the motion for Bail and is apparently (at least for now) handling Sealey's appeal.

Agreement which Sealey said he read, discussed with his lawyers and understood before he signed it. (*Id.* at 10:1–25, 11:1–18.)[4]

The prosecutor recited the factual basis for the guilty plea, which Sealey acknowledged reading in the Government's Change of Plea Memorandum and discussing with his lawyers. (*Id.* at 22:6–24:17.) He then admitted all facts outlined by the Government. (*Id.* at 25:7–14.) The prosecutor also restated the maximum possible penalties Sealey faced (again, taken from the Guilty Plea Agreement which Sealey read and understood). Both Sealey and his counsel stated they agreed with and understood Sealey's maximum potential exposure and Sealey stated that he had discussed with counsel the maximum possible penalties he faced. (*Id.* at 25:17–26:13, 28:3–6.) The Court then went over the operation and application of the sentencing guidelines and explained that it could impose a more severe sentence than Sealey or anyone else expected or recommended and that he could not withdraw his guilty plea if that were the case. (*Id.* at 26:14–27:14.) Sealey understood all of this. (*Id.*)

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert

GERALD J. PAPPERT, J.

[4] The Guilty Plea Agreement, among other things, states the maximum penalties Sealey faced. *See* (Guilty Plea Agreement ¶ 3).